



## BOULDER COUNTY BAR NEWSLETTER

# J U N E 2 0 1 2

### SUBDIVIDER BEWARE: CAN YOU BUILD ON THAT VACANT PARCEL?

By DAVID HUGHES

Over the past several years, banks and private property owners have discovered that parcels they own or collateralize cannot be built upon because the parcels are not "legal building lots," as defined by Boulder County. Sometimes, these lots can be made legal and buildable through a simple county land use process, but in other instances the parcel cannot be made buildable. This article examines steps landowners, banks, and especially their attorneys can take to avoid misunderstandings about the building status of a parcel.

#### 1. Judicial Subdivisions

A court that divides property into separate parcels through a judicial process (such as eminent domain, partition, quiet title, or foreclosure) changes the ownership interests of those involved in the litigation but oftentimes does not create new legal building lots. This is because even a judge's power to subdivide property is limited by state law. Section 30-28-101(10)(c)(II), C.R.S., allows courts to subdivide property "if the board of county commissioners of

the county in which the property is situated is given timely notice of any such pending action by the court and given opportunity to join as a party in interest . . ." If the Boulder County Commissioners receive a notice under this provision, the County examines the proposed subdivision to determine whether it is in general conformity to the County's Comprehensive Plan. If the proposed subdivision creates one or more new lots of less than 35 acres, the County will generally intervene in the action because the subdivision is contrary to the County's goal of maintaining a low-density rural character in non-urban areas. On the other hand, if the proposed subdivision would not result in new lots, the County may not intervene after receiving notice and the County would consider the resulting lots to be legal.

Although the legal effect of the statutory notice (or lack thereof) to a county of a proposed subdivision

#### BCBA Annual Dinner Thursday, June 7

5:30 PM

See page 3 to  
make a reservation

can be quite significant, the statutory provision has been overlooked by the courts and the parties in civil actions where a court-ordered subdivision is proposed. Boulder County has been working with Boulder District Court Clerk to promote awareness of this provision. The County, meanwhile, is taking advantage of forums such as this newsletter to pass on information about the notice provision to the bar.

Even awareness of the statutory provision is sometimes not enough. A court can issue an order that results in the division of land without realizing it. For example, if a parcel is described in a deed by reference to a lot and block on a

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## CALENDAR OF EVENTS

Pre-registration is required for all BCBA CLE programs. Register by e-mailing [lynne@boulder-bar.org](mailto:lynne@boulder-bar.org), or pay online with a credit card at [www.boulder-bar.org/calendar](http://www.boulder-bar.org/calendar).

**Tuesday, June 5**

**Elder Law**

**When You Really Need a New Will,  
Don't Let Lack of Testamentary  
Capacity Stand in the Way**

**Presenters: Renee Ezer  
and Spencer Crona**

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**Thursday, June 7**

**Annual Dinner and Awards**

**Folsom Stadium Center Plate**

**5:30 PM– Cash bar**

**6:15 dinner; see page 3**

**Tuesday, June 12**

**Employment Law**

**Skilled Negotiations**

**Presenter: Adrienne Fechter**

**Noon at Caplan and Earnest,**

**1 CLE \$20, \$10 new/young lawyers**

**Lunch \$10**

**Wednesday June 13**

**Solo Small Firm Happy Hour**

**5 PM at the Rib House**

**Spruce and 13th Boulder**

**Wednesday, June 20**

**Family Law and**

**Criminal Law Sections**

**The Workings of Criminal DV**

**and DUI Cases for**

**Family Law Practitioners**

**Presenter: David Harrison**

**Noon brownbag in the**

**Jury Assembly Room**

**1 CLE \$20, \$10 new/young lawyers**

**Wednesday, June 20**

**Real Estate Law**

**Update on Public Trustee Foreclosures:**

**Law, Practice, and the**

**Facts on the Ground.**

**Presenter: Richard Gebhardt, Boulder**

**County Public Trustee**

**Noon at The Boulder Cork**

**1 CLE \$20, \$10 new/young lawyers**

**Lunch at the Cork \$15**

**Thursday, June 21**

**Paralegals and Family Law**

**What is our client's income?**

**Understanding the components of tax  
returns and financial statements**

**Presenters: Jeremy Harkness and**

**Robyn Schnetzler**

**Noon at Caplan and Earnest**

**1 CLE \$20, \$10 for new/young lawyers**

**Lunch \$10**

**Thursday, June 21**

**Bankruptcy Roundtable Lunch**

**Noon at Agave Bistro**

**2845 28th Street in Boulder**

**Thursday, June 28**

**Judge Klein's Retirement Party**

**4:00 pm in the Jury Assembly Room**

**Boulder County Justice Center**

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\$58 PER PERSON**

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**and**  
**Honor the Recipient of the Ron Porter Award of Merit, Stan Garnett,**  
**Outstanding Young Lawyer of the Year Award, Bruce Wiener and**  
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## SUBDIVIDER BEWARE *(continued from page 1)*

plat, those who examine the deed may assume the parcel was legally subdivided through at county-approved process.

However, Boulder County does not recognize some older plats because they were created outside of any county approval process. As a result, a parcel described by reference to a plat could actually be a part of a larger parcel created by deed. Similarly, a deed might purport to create a single parcel through a metes and bounds description but only describe a portion of a larger parcel. In both of these scenarios, a court order permitting sale or the transfer ownership of the described

parcel will result in a division of land. However, the County will not recognize the validity of the division without notice under §30-28-101(10)(c)(II). The best way to avoid either of these scenarios is to have a good understanding of the nature and origin of the real property in dispute. This may require deed research or a request to the County to determine the legal status of the lot.

### 2. Building Lot Determinations

One way for potential buyers and creditors to avoid buying or taking a collateral interest in unbuildable lots is to request that the Boulder County Land Use Department

undertake a building lot determination. The process requires that the applicant fill out a form (see <http://www.bouldercounty.org/find/library/build/p03bldlotdetform.pdf>), provide a map showing the parcel and surrounding area, and pay a \$50.00 processing fee. After reviewing applicable deeds, land use dockets, and other information, the Land Use Director makes a determination about whether the parcel is a legal building lot. Most building lot determinations take about ten days. If the applicant disagrees with the determination, he or she may file an appeal of the determination with the County's Board of Adjustment, and ultimately district court. This process does not address all potential development issues, such as legal access, water, sanitation, and zoning approval.

The value of property as an asset or a collateral is not always as apparent as it appears, and even a court process may be insufficient to make property buildable under applicable regulatory provisions. Therefore, property owners and lienholders should understand the true nature—and value—of their property interests before making investment decisions.

*David Hughes is a Deputy County Attorney in the Boulder County Attorney's Office. He has served as co-chair of the BCBA Real Estate Section for the past two years.*

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## PRESIDENT'S PAGE

BY ELLEN CADETTE



Well, I made it to my last newsletter page, and the BCBA is still very much intact. What a relief! I could not have survived this year without Christine Hylbert and Lynne Barnett, and each one of my fellow Board members. Thanks Christine and Lynne, especially, for all you do.

I could recap the year here, but by and large it was smooth sailing and it wouldn't be a very interesting read. (Actually, I am not sure this will be an interesting read either, but carry on). Over the past year, the BCBA maintained its membership and even grew a little bit so that our membership is now just about 1600. The section co-chairs brought us many enlightening and affordable CLEs and organized some very worthwhile community projects. We also hosted young lawyer happy hours, recognized our pro bono volunteers, and hosted our judges at the annual Judges Dinner. We sent lawyers along with Boulder DAs to local high schools in celebration of Law Day and hosted our regional high school mock trial competition as well as the Colorado State Mock Trial Competition at the Boulder Justice Center with 22 teams from around Colorado. Thanks to all who attended the FoodWineJazzArt fundraiser for legal services.

Since Father's Day is coming up in June, I thought I would instead tell you a bit about yet another member of my family:

my dad Walter. He has these oft-repeated (and I mean oft) "sayings." He didn't make up a lot of these sayings himself, but our family calls them "Walterisms" nonetheless, due to his constant usage. There are so many I could probably write a book about them.

When I turn them over in my mind, most Walterisms are basic child-rearing admonishments, such as: "You're on thin ice," "Turn that boob tube off," "This room is a fire hazard!," "Over my dead body," "The phone is not a free good," "I wasn't born yesterday," "WHO HAS MY SCOTCH TAPE??!!" "It's the maid's day off," "Do you think I own stock in ConEd?" (translation: Xcel), and one of my personal favorites, "Stop carrying on as if your home were in a tree."

Some Walterisms merely describe his experience of endless hours spent waiting for the other members of his all-female family to be ready to go somewhere: "Your mother will be late to her own funeral," "11 O'clock mass starts at 11," "The bus is leaving," and "Don't dilly-dally."

Walterisms cover a wide variety of subjects, but I will spare you the gamut and choose instead those from which life lessons could potentially be extrapolated. (Recent law grads, take note!) Take, for example, "Don't spend it all in one place," the thing he would say when doling out any sort of allowance. This phrase has application in my particular line of work, in the sense that once a person files

*(continued on page 8)*



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- Long-Term Care Insurance
- Memory Loss, Dementia, & Alzheimer's
- Need a Fiduciary?
- Nutrition and Aging
- On Leaving Bequests — Let's Talk
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### LAW DAY 2012

This year volunteer lawyers went to high schools to talk with students about "What Happens When You Are 18." Attorneys went to Monarch, Niwot and Boulder High Schools. Thanks to the volunteers who went in groups of three to talk with the students about credit, consumer and criminal issues. Our excellent volunteers were: Toni Whalen, Pat Furman, Julie Caputo, Stan Garnett to Monarch High; Todd Stoneman, Jeff Larson and Arnold Hanuman at Niwot High and (pictured below) Fred Johnson, Maki Iatridis and Mark Langson who went to Boulder High.



## PRESIDENT'S PAGE *(continued from page 5)*

bankruptcy, their pre-petition payments are reviewed and can sometimes be avoided and recovered for the benefit of all of their creditors. So I tell clients to be wary of how they spend their tax refunds, for example, and not to spend them all in one place. Similar to "Don't put all of your eggs in one basket," it's probably a good idea to run a law firm that is somewhat diversified. If you are counting on one major case panning out, have some bread and butter cases going to pay the float. Or, don't spend all of your time at the office, lest you miss out on the rest of your life.

"Even paranoids have enemies" is another good Walterism. I admit I have never really understood this one - probably because I have a tendency to be more than a bit paranoid. In any event, my interpretation, particularly as it relates to being involved in protracted litigation, is that the sheer amount of time you spend worrying about something (i.e. your case) will not insulate you from problems. Do I worry way too much anyway? Of course, it's in my nature. But better to try to tackle legal issues from a positive standpoint ("That's the spirit!"), all the while keeping in mind that oppos-

ing counsel and the judge both "put their pants on one leg at a time" too. "Don't take yourself so seriously" is good advice, period. Sometimes just being a congenial lawyer with a decent sense of humor can take you far, but if you haven't done your research or thoroughly prepared your case, "that and fifty cents will get you on the subway." Price-adjusted, of course.

"What's on your docket for today?" is a question we lawyers consider constantly. Sometimes we get so  
*(continued on page 10)*



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## PRO BONO PAGE

### Pro Bono Referrals

Twelve cases were referred during April. Thank you to the following attorneys:

Steven Barnett  
Michael Belochi  
Eve Canfield  
Robert Cooper  
Christina Ebner  
Peggy Goodbody  
Rogelio Peña  
Jeff Skovron  
Craig Small  
Bruce Wiener

### Pro Se Program Volunteers

Sheila Carrigan  
Mary Louise Edwards  
Lenore Fox  
Tucker Katz  
Sherry Murgallis  
Leonard Tanis  
Karen Trojanowski

Thank you to the following attorneys who accepted pro bono referrals for the Boulder County AIDS Project in April:  
Christina Ebner

### Pro Bono Corner

Interested in a Pro Bono case?  
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### Boulder County Bar Association Professionalism Committee On-Call Schedule

June 4 Lee Strickler 303.443.6690	June 11 Mark Langston 303.440.9684
June 18 Christie Coates 303.443.8524	June 25 Anton Dworak 303.776.9900

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## PRESIDENT'S PAGE *(continued from page 8)*

busy it can be a challenge to manage the calendar, and all of the deadlines piled upon it seem to come up rather quickly, or even unexpectedly. Looking ahead at your docket for the day, let alone the month, is key. And if there does happen to be an unpleasant task on the calendar, "don't make a career out of it" as that's probably not a cost-effective way of dealing with things for you or your client. And ask yourself, before you go off on a tangent and spend too much of your time on unnecessary tasks, "What's that got to do with the price of rice in China?"

I wish I could follow my Dad's advice more, in reviewing some of these. Seeing that he "could have put a sandbox and a case of beer in the backyard and saved \$80 grand" on my college education, I am doing the best I can! Speaking of beer, I hope to see many of you at the annual dinner at the Center Plate at Folsom Field, where I will pass the torch to my worthy successor, Keith Collins.



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